

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 17, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER J. AWBERY,

Defendant.

NO: 2:03-CR-175-RMP-1

ORDER GRANTING
DEFENDANT'S MOTION TO
REDUCE SENTENCE

BEFORE THE COURT is Defendant's Motion to Reduce Sentence, ECF No. 142. *See also* ECF No. 134 (*pro se* Petition to Renew Motion Pursuant to 18 U.S.C. § 3582(c)(2)). The Court has considered the motion, the record, and is fully informed.

BACKGROUND

On March 9, 2004, Defendant Christopher J. Awbery plead guilty to two counts: 1) Conspiracy to Distribute more than 500 grams of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 846; and 2) Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C.

1 § 924(c)(1). ECF No. 65-1. The Court sentenced Mr. Awbery to 270 months of
2 imprisonment followed by 5 years of supervised release on each count to run
3 concurrently. ECF No. 88-1.

4 Mr. Awbery currently is incarcerated at FCI Oxford and his projected release
5 date from the Bureau of Prisons (“BOP”) is August 20, 2023.¹ Mr. Awbery is
6 42 years old and has received a COVID-19 vaccine. ECF Nos. 142 at 3, 146-1.

7 Defendant previously moved to reduce his sentence in 2015 pursuant to
8 18 U.S.C. § 3582(c) and Amendment 782. ECF No. 124. The Court concluded that
9 since the Sentencing Commission lowered the guideline range for Defendant’s § 846
10 sentence, Mr. Awbery was “potentially eligible for resentencing.” ECF No. 126 at
11 3. However, the Court found that a reduction was not warranted at that time. *Id.* at
12 3–4.

13 On August 24, 2020, Mr. Awbery filed a Motion for Sentencing Reduction
14 Pursuant to 18 U. S. C. § 3582(c)(2) and Amendment 782 of the Sentencing
15 Guidelines. ECF No. 132. On September 2, 2020, the Court denied Mr. Awbery’s
16 motion with leave to renew. ECF No. 133. Defendant’s motion did not contain any
17 facts or argument relating to the Section 3553(a) factors. *Id.* at 3. However, the
18 Court noted that several years had passed since the Defendant’s first motion to
19 reduce his sentence and that new circumstances might exist. *Id.* at 4.

20
21 ¹ See Federal Bureau of Prisons, Find an Inmate (May 17, 2021),
<https://www.bop.gov/inmateloc/> (No. 10782-085).

1 On November 2, 2020, the Defendant filed a Petition to Renew Motion
2 Pursuant to 18 U.S.C. § 3582(c)(2). ECF No. 134. Upon reviewing Defendant's
3 Renewed Motion, the Court construed the motion as a request for compassionate
4 release under 18 U.S.C. § 3582(c)(1)(A). ECF No. 135 at 2. Pursuant to General
5 Order 20-9-1 (Aug. 31, 2020), the Court appointed the Federal Defenders Office to
6 assist with Defendant's pursuit of compassionate release. *Id.*

7 On April 19, 2021, Mr. Awbery, through counsel, filed a Motion to Reduce
8 Sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). ECF No. 142. Mr. Awbery seeks
9 to reduce his sentence to time-served, followed by five years of supervised release
10 and an agreed-upon special condition of home confinement for the first year of
11 supervised release. ECF No. 147 at 6.

12 LEGAL STANDARD

13 Federal Rule of Criminal Procedure 35 generally delineates the parameters of
14 a district court's ability to modify a prison sentence once judgment is entered. That
15 provision offers no relief to Defendant.

16 However, 18 U.S.C. § 3582(c)(1)(A) also reserves an opportunity for a
17 reduced sentence if, after the Court considers the factors under 18 U.S.C. § 3553(a)
18 to the extent that they are applicable, the Court finds that "extraordinary and
19 compelling reasons warrant such a reduction" and the reduction is "consistent with
20 applicable policy statements issued by the Sentencing Commission[.]"

1 The U.S. Sentencing Commission has issued a policy statement recognizing
2 certain circumstances as “extraordinary and compelling reasons” for purposes of
3 compassionate release, so long as “the defendant is not a danger to the safety of any
4 other person or to the community, as provided in 18 U.S.C. § 3142(g)”:

5 (A) Medical Condition of the Defendant.—

6 (i) The defendant is suffering from a terminal illness (i.e., a
7 serious physical and advanced illness with an end of life
8 trajectory)

9 (ii) The defendant is—

10 (I) suffering from a serious physical or medical condition,

11 (II) suffering from a serious functional or cognitive
12 impairment, or

13 (III) experiencing deteriorating physical or mental health
14 because of the aging process, that ‘substantially
15 diminishes the ability of the defendant to provide self-care
16 within the environment of a correctional facility and from
17 which he or she is not expected to recover.’

18 (B) Age of the Defendant.—The defendant (i) is at least 65 years old;

19 (ii) is experiencing a serious deterioration in physical or mental health
20 because of the aging process; and (iii) has served at least 10 years or 75
21 percent of his or her term of imprisonment, whichever is less.

1 (C) Family Circumstances—

2 (i) The death or incapacitation of the caregiver of the defendant's
3 minor child or minor children.

4 (ii) The incapacitation of the defendant's spouse or registered
5 partner when the defendant would be the only available caregiver
6 for the spouse or registered partner.

7 (D) Other Reasons—As determined by the Director of the Bureau of
8 Prisons, there exists in the defendant's case an extraordinary and
9 compelling reason other than, or in combination with, the reasons
10 described in subdivisions (A) through (C).

11 U.S. Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.13. Section 1B1.13,
12 U.S.S.G., has not been updated since enactment of the First Step Act.

13 As recently held by the Ninth Circuit, the current version of U.S.S.G.
14 § 1B1.13 is not an “applicable policy statement[]” for 18 U.S.C. § 3582(c)(1)(A)
15 motions filed by a defendant. *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir.
16 Apr. 8, 2021). “In other words, the Sentencing Commission has not yet issued a
17 policy statement ‘applicable’ to § 3582(c)(1)(A) motions filed by a defendant.” *Id.*
18 Nonetheless, “[t]he Sentencing Commission’s statements in U.S.S.G. § 1B1.13 may
19 inform a district court's discretion for § 3582(c)(1)(A) motions filed by a defendant,
20 but they are not binding.” *Id.* (citing *United States v. Gunn*, 980 F.3d 1178, 1180
21 (7th Cir. 2020)). District courts are free to consider “the full slate of extraordinary

1 and compelling reasons that an imprisoned person might bring before them in
2 motions for compassionate release.” *United States v. Brooker*, 976 F.3d 228, 237
3 (2d Cir. 2020).

4 DISCUSSION

5 A. Exhaustion of Remedies

6 Following enactment of the First Step Act, a federal prisoner may move on his
7 own behalf for a sentence reduction and compassionate release after exhausting all
8 administrative appeals of the BOP’s refusal to bring such a motion or after “lapse of
9 30 days from the receipt of such a request by the warden of the defendant’s facility,
10 whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A).

11 Mr. Awbery submitted compassionate release requests to the warden at FCI
12 Oxford on February 12, 2021, and March 19, 2021. ECF Nos. 142-1, 142-2, 142-8.
13 On April 9, 2021, the warden denied Mr. Awbery’s request. The Government
14 agrees that for the purposes of this motion, Defendant has exhausted his
15 administrative remedies. ECF No. 146 at 11. Accordingly, the Court finds that Mr.
16 Awbery’s motion is timely and will address the merits of his request.

17 B. Extraordinary and Compelling Circumstances

18 A court may reduce the defendant’s term of imprisonment “after considering
19 the factors set forth in [18 U.S.C. § 3553(a)]” if the Court finds, as relevant here,
20 that (i) “extraordinary and compelling reasons warrant such a reduction” and (ii)
21

1 “such a reduction is consistent with applicable policy statements issued by the
2 Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A)(i).

3 In light of the Ninth Circuit’s decision, the current version of U.S.S.G.
4 § 1B1.13 is not currently an “applicable” policy statement for § 3582(c)(1)(A)
5 motions filed by a defendant; thus, the Court is not bound by U.S.S.G. § 1B1.13 in
6 determining what constitutes “extraordinary and compelling reasons” in ruling on
7 Defendant’s motion. *Aruda*, 993 F.3d at 802. However, U.S.S.G. § 1B1.13 may
8 nonetheless inform the Court’s discretion. *Id.*

9 Mr. Awbery contends that a combination of extraordinary and compelling
10 reasons warrant a sentence reduction, including Mr. Awbery’s medical conditions of
11 hypothyroidism, hepatitis C, a personal history of hypertension, and a familial
12 history of colon cancer, as well as familial circumstances, specifically the need to
13 provide care to his grandparents. ECF No. 142 at 16–19. Mr. Awbery’s
14 grandmother was recently diagnosed with congestive heart failure and chronic
15 obstructive pulmonary disorder, leaving Mr. Awbery’s 86-year-old grandfather to
16 care for the two of them alone. ECF No. 142-5. Furthermore, in light of
17 Amendment 782, Mr. Awbery would face a lesser sentencing guideline range of
18 168–210 months. ECF No. 142 at 22; *see also* ECF No. 126 at 3–5 (noting Mr.
19 Awbery’s eligibility for relief under Amendment 782, but declining to grant relief).

20 The Government agrees that the totality of the circumstances present an
21 extraordinary and compelling reason for the Court to reduce Mr. Awbery’s sentence.

1 ECF No. 146 at 14 (“If the need to assist his grandparents is not alone a reason to
2 reduce the Defendant’s sentence, it is certainly in combination with the length of his
3 imprisonment and his rehabilitation.”).

4 The Court concurs and finds that Mr. Awbery’s familial circumstances, in
5 addition to the length of imprisonment, present extraordinary and compelling
6 reasons justifying release.

7 **C. Section 3553(a) Factors**

8 Mr. Awbery argues that consideration of the 18 U.S.C. § 3553(a) sentencing
9 factors weighs in favor of a sentencing modification. ECF No. 42 at 23–25. The
10 Government concedes that the 18 U.S.C. § 3553(a) factors are more favorable to the
11 Defendant today than they were in 2015 when Mr. Awbery moved and was denied a
12 sentence reduction pursuant to 18 U.S.C. § 3582(c). ECF No. 146 at 15. These
13 changes to the § 3553(a) analysis include six additional years of compliance with
14 BOP rules, continued reduced classification to a “minimum” security camp,
15 deterioration of his grandparents’ health, and additional programming. ECF No. 147
16 at 5.

17 Section 3553(a) instructs courts to impose a sentence “sufficient, but not
18 greater than necessary” to accomplish the goals of sentencing. 18 U.S.C.
19 § 3553(a). The factors are: (1) the nature and circumstances of the offense and the
20 history and characteristics of the defendant; (2) the need for the sentence imposed;
21 (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing

1 range established by the Sentencing Guidelines; (5) pertinent policy statements
2 issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing
3 disparities among defendants who have similar criminal records and have been
4 found guilty of similar conduct; and (7) the need to provide restitution to victims.

5 The Court agrees with the Government that the nature and circumstances of
6 the underlying offenses were inherently serious; however, the sentencing guideline
7 range for Defendant's drug offense has since been reduced by two levels, and Mr.
8 Awbery has served more than 17 years in prison. As set forth by the Government,
9 "the over 17-year sentence already served reflects the seriousness of the crime,
10 promotes respect for the law and provided just punishment especially in light of the
11 change in the Sentencing Guidelines which reduced the Defendant's Sentencing
12 Guideline Range." ECF No. 146 at 16.

13 While incarcerated, Mr. Awbery has completed several educational courses,
14 and earned his lift truck operator certification. ECF Nos. 142-9, 142-11. If released
15 from incarceration, Mr. Awbery has significant family support, as well as a stable
16 residence in Talkeetna, Alaska, where he will care for his ailing grandparents. ECF
17 Nos. 142-5, 142-7. Given the support from Mr. Awbery's family, Mr. Awbery's
18 rehabilitative efforts while incarcerated, and his current placement at a minimum
19 security facility, the Court finds that Mr. Awbery does not present a danger to the
20 safety of the community and his release plan will act as a sufficient deterrent to
21 future criminal conduct. *See* 18 U.S.C. § 3553.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Reduce Sentence, **ECF No. 142**, is **GRANTED**.
3 Defendant's *pro se* Petition to Renew Motion Pursuant to 18 U.S.C. § 3582(c)(2),
4 **ECF No. 134**, is **DENIED AS MOOT**.

5 2. The remainder of Defendant's previously imposed sentence is reduced
6 to **time served**, and an Amended Judgment shall issue. 18 U.S.C. § 3582(c)(1)(A).

7 3. The term of supervised release is 5 years on each count to run
8 concurrently. ECF No. 88 at 3. Defendant shall be subject to mandatory, standard,
9 and special conditions of release, including the following **mandatory** conditions:

10 a. You must not commit another federal, state or local crime.

11 b. You must not unlawfully possess a controlled substance,
12 including marijuana, which remains illegal under federal law.

13 c. You must refrain from any unlawful use of a controlled
14 substance. You must submit to one drug test within 15 days of release from
imprisonment and at least two periodic drug tests thereafter, as determined by the
court.

15 d. You must cooperate in the collection of DNA as directed by the
16 probation officer.

17 Defendant shall also be subject to the following **standard** conditions:

18 a. You must report to the probation office in the federal judicial
19 district where you are authorized to reside within 72 hours of your release from
imprisonment, unless the probation officer instructs you to report to a different
probation office or within a different time frame.

20 b. After initially reporting to the probation office, you will receive
21 instructions from the court or the probation officer about how and when you must
report to the probation officer, and you must report to the probation officer as
instructed.

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1
2 c. You must not knowingly leave the federal judicial district where
3 you are authorized to reside without first getting permission from the court or the
4 probation officer.

5 d. You must be truthful when responding to the questions asked by
6 your probation officer.

7 e. You must live at a place approved by the probation officer. If
8 you plan to change where you live or anything about your living arrangements (such
9 as the people you live with), you must notify the probation officer at least 10 days
10 before the change. If notifying the probation officer in advance is not possible due
11 to unanticipated circumstances, you must notify the probation officer within 72
12 hours of becoming aware of a change or expected change.

13 f. You must allow the probation officer to visit you at any time at
14 your home or elsewhere, and you must permit the probation officer to take any items
15 prohibited by the conditions of your supervision that he or she observes in plain
16 view.

17 g. You must work full time (at least 30 hours per week) at a lawful
18 type of employment, unless the probation officer excuses you from doing so. If you
19 do not have full-time employment you must try to find full-time employment, unless
20 the probation officer excuses you from doing so. If you plan to change where you
21 work or anything about your work (such as your position or your job
responsibilities) you must notify the probation officer at least 10 days before the
change. If notifying the probation officer in advance is not possible due to
unanticipated circumstances, you must notify the probation officer within 72 hours
of becoming aware of a change or expected change.

h. You must not communicate or interact with someone you know
is engaged in criminal activity. If you know someone has been convicted of a
felony, you must not knowingly communicate or interact with that person without
first getting the permission of the probation officer.

i. If you are arrested or questioned by a law enforcement officer,
you must notify the probation officer within 72 hours.

j. You must not own, possess, or have access to a firearm,
ammunition, destructive device, or dangerous weapon (i.e. anything that was
designed, or was modified for, the specific purpose of causing bodily injury or death
to another person such as nunchakus or tasers).

1 k. You must not act or make any agreement with a law enforcement
2 agency to act as a confidential human source or informant without first getting the
permission of the court.

3 l. If this judgment imposes restitution, a fine, or special assessment,
4 it is a condition of supervised release that you pay in accordance with the Schedule
of Payments sheet of [the Amended] judgment. You shall notify the probation
5 officer of any material change in your economic circumstances that might affect
your ability to pay any unpaid amount of restitution, fine, or special assessments.

6 m. You must follow the instructions of the probation officer related
7 to the conditions of supervision.

8 Defendant shall also be subject to the following **special** conditions:

9 a. You must submit your person, residence, office, or vehicle and
10 belongings to a search, conducted by a probation officer, at a sensible time and
manner, based upon reasonable suspicion of contraband or evidence in violation of a
11 condition of supervision. Failure to submit a search may be grounds for revocation.
You must warn persons with whom you share a residence that premises are subject
to search.

12 b. You must undergo a substance abuse evaluation and, if
13 indicated by a licensed/certified treatment provider, enter into and successfully
complete an approved substance abuse treatment program, which could include
14 inpatient treatment and aftercare upon further order of the court. You must
contribute to the cost of treatment according to your ability to pay. You must allow
15 full provider reciprocal disclosure between the supervising officer and treatment.

16 c. You must abstain from the use of illegal controlled substances,
and must submit to urinalysis and sweat patch testing, as directed by the supervising
17 officer, but no more than 6 tests per month, in order to confirm continued abstinence
from these substances.

18 d. You must not enter into or remain in any establishment where
alcohol is the primary item of sale. You must abstain from alcohol and must submit
19 to urinalysis and Breathalyzer testing as directed by the supervising officer, but no
more than 6 tests per month, in order to confirm continued abstinence from this
20 substance.

21 e. You shall have no contact with any of the co-defendants, by letter
or other communication devices, audio or visual devises, or through a third party,

1 unless authorized by the supervising probation officer. You shall not enter the
2 premises or loiter within 1000 feet of their residence or place of employment. This
3 provision does not apply to his mother Ms. Hutchinson who is a co-defendant, 2:03-
4 CR-00216-FVS-1.

5 Defendant shall also be subject to the following **additional** special condition:

6 f. For a period of 12 months, you are restricted to your residence at
7 all times, except for employment; education; religious services; medical, substance
8 abuse, or mental health treatment; attorney visits; court appearances; court-ordered
9 obligations; or other activities as pre-approved by your supervising officer (home
10 detention). At the discretion of your supervising officer, electronic home monitoring
11 equipment or other alternative methods of supervision may be employed to confirm
12 compliance. If there is a cost associated with this equipment, you shall contribute
13 according to your ability to pay.

14 4. This order is **stayed for up to fourteen days** for the verification of
15 Defendant's residence and release plan, to make appropriate travel arrangements,
16 and to ensure Defendant's safe release. The Defendant shall be released as soon as
17 the residence is verified, a release plan is established, appropriate travel
18 arrangements are made, and it is safe for Defendant to travel. If more than fourteen
19 days are needed to confirm Mr. Awbery's living arrangements, and ensure Mr.
20 Awbery's safe release, the United States Probation Office or the parties shall
21 immediately notify the Court and explain why the stay should be extended.

5. An Amended Judgment shall be issued reflecting the reduction of
Defendant's sentence to time served, the supervised release term, and the additional
special condition.

